IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 77 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMESHBHAI PARABATBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR RD DAVE for Petitioner

MR BY MANKAD APP for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 2

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CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 26/12/2000

ORAL JUDGEMENT

The original complainant of crime registered as C.R.No. I 415/98 in Junagadh City "A" Division Police Station for offence punishable under Section 379 of the Indian Penal Code, has by preferring this Criminal

Revision Application under Sec. 397 of the Criminal Procedure Code, 1973 ( for short the "Cr.P.C.") challenged correctness, legality and propriety of the common judgment Ex.13 dated 7/9/1999 rendered by the learned Sessions Judge at Junagadh (who will be hereinafter be referred to as the learned Appellate Judge for the sake of brevity) in Criminal Revision Application No.29 of 1999 and Criminal Revision Application No.30 of 1999 both filed by the present revision petitioner.

2. The facts leading to this present Criminal Revision Application, in a nutshell, are as follows:

The original complainant i.e. present revision petitioner lodged a complaint in Junagadh City "A" Division Police Station which came to be registered as CR.No.I 415/98. It was with regard to theft of cash amount of Rs.1,11,000/-. The complaint was lodged on 25th December,1998. During the course of police investigation, present revision opponent no.2 was arrested and cash amount of Rs.1,11,000/- as described in Panchnama was seized. For that amount, the original complainant filed one application bearing Criminal Misc. Application No.9 of 1999 for return of Muddamal cash of Rs.1,11,000/- in the Court of the learned Chief Judicial Magistrate, Junagadh (who will be referred to hereinafter as the learned Magistrate). That Criminal Misc. Application No.9 of 1999 was allowed by the learned Magistrate vide his order dated 17th March, 1999.

3. As submitted by Shri R.D.Dave, the learned advocate for the revision petitioner, the original accused had also preferred similar type of application for return of Muddamal cash vide Criminal Revision Application No.20 of 1999. That application preferred by the accused was dismissed by the learned Magistrate. Thereafter the present complainant preferred Criminal Revision Application No. 30 of 1999 and the original accused preferred Criminal Revision Application No.29 of 1999 to the learned Appellate Judge for challenge to his application having been dismissed by the learned Magistrate. He also preferred Criminal Revision Application No.30 of 1999 to the Sessions Judge, Junagadh for challenge to an order of the learned Magistrate passed in favour of the present revision petitioner original complainant. The Sessions Judge, Junagadh heard both Criminal Revision Applications Nos. 29 of 1999 and 30 of 1999 together and passed a common judgment Ex.13 on 7th September, 1999. By that common judgment and order, Criminal Revision Application No.29 of 1999 was allowed and the order of the learned Magistrate passed in

Criminal Misc. Application No.19 of 1999 was quashed and set aside. Simultaneously, Criminal Revision Application No.30 of 1999 was partly allowed by the learned Sessions Judge, Junagadh who partly confirmed the order of the learned Magistrate passed in Criminal Misc. Application No.20 of 1999, meaning thereby, the learned Sessions Judge confirmed the order of rejection of application preferred by the accused in part.

4. Being aggrieved against and dissatisfied with the said common judgment dated 7th September, 1999 passed in Criminal Revision Application No. 29 of 1999 and 30 of 1999, the original complainant has preferred this present Criminal Revision Application.

5. Heard Shri R.D.Dave, the learned advocate for the revision petitioner, Shri Y.B.Mankad, the learned APP for the revision opponent No.1 -State and Ms. Yamini Desai, the learned advocate for and on behalf of Shri Y.S.Lakhani, the learned advocate for the revision opponent No.2. I have examined the impugned judgment Ex.17 dated 7th September, 1999 rendered by the learned Sessions Judge, Junagadh. I have also gone through the judgment rendered by the learned Chief Judicial Magistrate in Criminal Misc. Application No. 19 of 1999.

6. When this matter is taken up for hearing, the learned advocates for all the parties jointly submitted that this Criminal Revision Application be allowed and consequently the impugned judgment challenged in this Criminal Revision Application be set aside without assigning any reason in the order of this Court. They also requested that some suitable directions be given to the learned Chief Judicial Magistrate before whom the criminal case pursuant to chargesheet filed in aforesaid CR.No.I 415/98 of Junagadh City "A" Division Police Station is pending.

7. Having heard the learned advocates for all the parties and on going through the impugned judgment challenged in this Criminal Revision Application and the grounds stated in memo of this Criminal Revision Application, this Court is of the view that the common judgment Ex.13 dated 7th September, 1999 by which in Criminal Revision Application No.29 of 1999 and Criminal Revision Application No.30 of 1999 are decided by the Sessions Judge, Junagadh is set aside as also an order dated 17th March, 1999 passed by the learned Chief Judicial Magistrate, Junagadh in Criminal Misc. Application No.19 of 1999 is set aside.

8. This Criminal Revision Application stands disposed of with the following directions to the learned trial Magistrate :

(1) The leaned Chief Judicial Magistrate is directed to deposit cash amount of Rs.1,11,000/- which has been seized as Muddamal article, in Fixed Deposit Account in cumulative scheme with State Bank of India, Junagadh, initially for 13 (thirteen) months and in case of necessity, that Fixed Deposit be renewed for further period from time to time, till trial of the case is over, as may be deemed fit proper by him.

(2) The learned Chief Judicial Magistrate, Junagadh is directed to expedite the trial of said criminal case arising from CR.No. I 415/98 of Junagadh City "A" Division Police Station as early as possible preferably within one year from the date of receipt of writ of this Court by his office.

(3) It is also made clear that after conclusion of trial, the learned Magistrate may pass appropriate order for return of Muddamal article including cash amount of Rs.1,11,000/- under Sec. 452(1) Criminal Procedure Code, 1973 and at that time, he may pass appropriate order for the said amount of Rs.1,11,000/- to be returned together with interest, if permissible under the law, to the person entitled as may be held by him.

5. In view of aforesaid directions, this Criminal Revision Application stands disposed of. Rule is made absolute to the aforesaid extent.

Date: 26/12/2000. (H.H.MEHTA,J.)
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